

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2350 OF 2023

**SHRIRAM DASHRAM BHALERAO
VERSUS
THE STATE OF MAHARASHTRA, THROUGH ITS SECRETARY AND OTHERS**

.....
Advocate for Petitioner : Mr. Anand V. Patil (Indrale)
AGP for Respondent – State : Mr. S. G. Sangle
Advocate for Respondent Nos.2 to 4 : Mr. Santosh B. Pulkundwar
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**CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.**

DATED : 01st MARCH, 2023

PER COURT :

1. The Petitioner has put forth prayer clause 'B' as under:-

“B] By issuing writ of mandamus or any other appropriate writ, order or directions, the impugned action of respondents thereby recovering an amount Rs.79,225/- (Seventy Nine Thousand Two Hundred Twenty Five Rupees) from pensionary benefits of petitioner be quashed and set aside. Consequently, the respondents be directed to refund the amount of Rs.79,225/- along with interest at the rate of 12% of per annum and for that purpose necessary direction be issued.”

2. It is submitted, on instructions, that the Petitioner has neither indulged in any fraud nor was he instrumental in orchestrating a wrong pay

fixation to derive undue benefits. There was no undertaking tendered by the Petitioner to the employer that if he is inadvertently paid excess amount, he would return the said amount. Reliance is placed on the judgments delivered by the Honourable Supreme Court in *Syed Abdul Qadir Vs. State of Bihar*, 2009 (3) SCC 475 and the *State of Punjab and Others vs. Rafiq Masih (White Washer) and others*, 2015 (4) SCC 334.

3. The learned advocate representing Respondents - Zilla Parishad submits on the basis of the record that the Petitioner was never called upon to tender an undertaking that he would refund any excess amount, if inadvertently paid to him. We find from the record that there is no allegation of fraud against the Petitioner. There is also no allegation that he orchestrated a wrong pay fixation so as to derive excess payments. Laches or oblique motives are not attributed to him.

4. Considering the above and keeping in view the law laid down in *Syed Abdul Qadir and Rafiq Masif (supra)*, this Petition is allowed. The impugned action of recovering the amount of Rs.79,225/- from the pensionary benefits of the Petitioner, is quashed and set aside. Insofar as the prayer of the Petitioner to grant interest is concerned, the learned Advocate Shri Pulkundwar and the learned A.G.P. rightly submit that the cause of action arose in 2017. The recovery of amount was also carried out in 2017.

The Petition has been filed in January 2023. In this view of the matter, we are granting nominal interest at the rate of 3% only for the period of three years preceding the date of the filing of the Writ Petition.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE, J.)

Tandale/-